

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CRYSTAL BEAR, by and through
her Guardian Ad Litem, Gary
N. Bloom,

Plaintiff,

v.

FORD MOTOR COMPANY, a
Delaware corporation; and
MARLA BEAR, a single person,

Defendants.

NO. CV-05-0253-EFS

PROTECTIVE ORDER

On April 3, 2006, Defendant Ford Motor Company ("Ford") filed a Motion for Order Granting Stipulated Protective Order (Ct. Rec. 23-1) and a Stipulated Protective Order (Ct. Rec. 23-3). Based on Ford's need to protect trade secrets and confidential business information, the Court finds good cause exists to grant Ford's motion. Accordingly, the following protective order is **HEREBY ENTERED:**

1. The parties have a mutual interest in the orderly and prompt production of discovery, and each side has discussed with the other their respective concerns about the propriety of designating trade secret or confidential business information. Having weighed the issues related to having a court decide the propriety of a

1 confidential designation, the following compromise has been reached
2 and is set forth below.

3 2. Documents to be produced by Ford in this litigation that
4 contain confidential trade secret or proprietary business information
5 shall hereafter be referred to as "Protected Documents." When used in
6 this Order, the word "documents" means all written material,
7 videotapes, and all other tangible items, whether produced as hard
8 copy, computer diskette, CD-ROM, or otherwise. Except as otherwise
9 indicated below, documents designated by Ford to any party to this
10 litigation and/or the party's attorneys, consultants, agents, or
11 experts in this litigation as Protected Documents shall be given
12 confidential treatment as described below. Ford will visibly mark all
13 Protected Documents "Subject to Protective Order" or "Confidential."

14 3. Ford has the burden of proving that a Protected Document
15 contains trade secrets or other confidential business or technical
16 information should a party or non-party seek to disclose the document or
17 its contents outside the parameters of this Order. Prior to designating
18 any material as a Protected Document "Subject to Protective Order" or
19 "Confidential," Ford will make a bona fide determination that material
20 is, in fact, a trade secret or other confidential business or technical
21 information, the dissemination of which could damage Ford's competitive
22 position. If any party to this litigation disagrees with the "Subject
23 to Protective Order" or "Confidential" designation of any document, the
24 party shall notify Ford in writing. Ford will timely apply to this
25 Court to set a hearing for the purpose of establishing that said
26 document contains trade secrets or is otherwise confidential or
27

1 proprietary. Any document marked as "Subject to Protective Order" or
2 "Confidential" will continue to be treated as a Protected Document
3 pending termination by the Court as to its confidential or proprietary
4 status.

5 4. Both the Protected Documents and the information contained
6 therein shall be treated as confidential. Except upon the prior written
7 consent of Ford or upon order of this Court, the Protected Documents and
8 the information contained therein may be shown, disseminated, or
9 disclosed only to the following persons:

10 (a) Counsel of record for each party in this lawsuit,
11 including other members of counsels' law firms and any other counsel
12 of record associated to assist in the preparation or trial of this
13 case;

14 (b) Employees of counsel of record who assist in the
15 preparation of trial of this case;

16 (c) Experts and non-attorney consultants retained by the
17 parties to this litigation for the preparation of trial of this case,
18 provided that no disclosure shall be made to any expert or consultant
19 who is employed by a competitor of Ford and provided that disclosure
20 of Protected Documents to such experts and consultants will be in hard
21 copy format only and will not be in any digitized or other computer
22 readable format;

23 (d) Any party to this litigation;

24 (e) Any mediator(s) retained by the parties to assist with
25 the potential settlement of this lawsuit; and

26 (f) Attorneys representing plaintiffs and experts and
27

1 consultants retained by plaintiffs in other cases pending against Ford
2 involving allegations of defective stability and handling, rear seat
3 lap-belt failure, inadequate warnings regarding seatbelt
4 accessibility, inadequate roof support or strength, and/or improper
5 side or rear window glazing in the 1984-1990 Bronco II, provided that
6 no disclosure shall be made to any expert or consultant who is
7 employed by a competitor of Ford. This paragraph 4(f) shall have no
8 effect or any bearing on a determination of the proper scope of
9 discovery in this case.

10 5. Before receiving access to any of the Protected Documents or
11 the information contained therein, each person described above shall
12 be advised of the terms of this Order, shall be given a copy of this
13 Order, and shall agree in writing, in the form attached hereto as
14 "Exhibit A," to be bound by its terms and to submit to the
15 jurisdiction of this Court. Counsel for the parties will retain the
16 signed "Exhibit A" forms and keep a list of all persons who have
17 received Protected Documents for inspection by the Court and, on order
18 of the Court, counsel for Ford.

19 6. If documents marked "Subject to Protective Order" or
20 "Confidential" are to be disclosed to the Court and/or the Court's staff
21 as attachments to any motion or declaration, or otherwise, such
22 documents must be filed under seal.

23 7. To the extent the Protected Documents or information contained
24 therein are used in the taking of depositions, such documents or
25 information shall remain subject to the provisions of this Protective
26 Order, along with the transcript pages of the deposition testimony
27 dealing with the Protected Documents or information. Any court reporter
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1 or transcriber who reports or transcribes testimony in this action shall
2 agree that all Protected Documents or information designated under this
3 Order shall remain confidential and shall not be disclosed by them,
4 except pursuant to the terms of this Order, and that any notes or
5 transcriptions of such testimony (and any accompanying exhibits) will be
6 retained by the reporter under the terms of this Protective Order or
7 delivered to counsel of record.

8 8. This Protective Order shall not apply to the disclosure of
9 Protected Documents or the information contained therein at the time
10 of trial, through the receipt of Protected Documents into evidence or
11 through the testimony of witnesses. The closure of trial proceedings
12 and sealing of the record of a trial involve considerations not
13 presently before the Court. These issues may be taken up as a
14 separate matter upon the motion of any of the parties at the threshold
15 of or during trial.

16 9. Inadvertent or unintentional production of documents
17 containing information that should have been marked "Subject to
18 Protective Order" or "Confidential" shall not be deemed a waiver in
19 whole or in part of Ford's claims of protection or confidentiality.

20 10. No party, nor that party's counsel or experts or any other
21 person retained by the party to assist in the preparation of this action
22 shall under any circumstances sell or offer to sell, advertise, or
23 publicize the contents of Protected Documents or the fact that the party
24 has obtained confidential or proprietary information from Ford.

25 11. This Order may not be waived, modified, abandoned, or
26 terminated, in whole or in part, except by an instrument in writing
27 signed by the parties. If any provision of this Order shall be held
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1 invalid for any reason whatsoever, the remaining provisions shall not be
2 affected thereby.

3 12. This Order shall be binding upon the parties hereto, upon
4 their attorneys, and upon the parties' and their attorneys' successors,
5 executors, personal representatives, administrators, heirs, legal
6 representatives, assigns, subsidiaries, divisions, employees, agents,
7 independent contractors, or other persons or organizations over which
8 they have control and shall remain binding after the termination of this
9 litigation.

10 13. Counsel shall be required to return the Protected Documents to
11 Ford after the conclusion of this case.

12 14. The Court retains jurisdiction over the parties and recipients
13 of the Protected Documents for the enforcement of the provisions of this
14 Order following termination of this litigation.

15 **IT IS ORDERED:**

16 A. Ford's Motion for an Expedited Hearing (**Ct. Rec. 21**) is **GRANTED**.

17 B. Ford's Motion for Order Granting Stipulated Protective Order
18 (**Ct. Rec. 23**) is **GRANTED**.

19 **IT IS SO ORDERED.** The District Court Executive is directed to
20 enter this Order and provide a copy to counsel.

21 **DATED** this 5th day of April, 2006.

22
23 _____
24 s/Edward F. Shea
25 EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE

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PROTECTIVE ORDER**EXHIBIT A**

I, _____, have reviewed the Protective Order entered in *Enhanced Software Products, Inc. v. Oregon Central Credit Union*, (Case No. CV-05-161-EFS) pending in the United States District Court for the Eastern District of Washington before the Honorable Edward F. Shea, and understand the Protective Order. I agree to be bound by the Protective Order.

The materials and information afforded confidential treatment under this Protective Order shall be used by me in connection with the above-referenced litigation and for no other purpose and that I shall have no right to use such materials or information in any other litigation without prior approval of this Court or upon proper order of any court of competent jurisdiction. Further, I agree to keep such information confidential and realize that I may be held in contempt of court for failure to keep such information confidential.

I understand that any use of materials stamped "CONFIDENTIAL" or of information obtained by me from such materials, or from any copy, summary, or abstract thereof, or from any confidential testimony, in any manner may be in violation of the Court's Order. I hereby consent to the exercise of personal jurisdiction in the United States District Court for the Eastern District of Washington for purposes of enforcement of the Order.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this ____ day of _____, 2006.

(Signature)

(Print Name)

(Address)